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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 LOLA MCGEE,

8 Plaintiff,

9 v.

10 MEGAN J. BRENNAN, United States Postal
11 Service Postmaster General,

12 Defendant.

Case No. 2:13-cv-01426-RFB-VCF

ORDER

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14 Before the Court are two contested motions: Plaintiff Lola McGee's Motion for Entry of
15 Clerk's Default (ECF No. 215) and Motion for Default Judgment (ECF No. 216). The Court
16 previously dismissed Plaintiff's earlier motions for the same relief in its July 18, 2018 Order. ECF
17 No. 213 (denying ECF Nos. 193, 194). The Court found that "Defendants have actively
18 participated in the litigation and the strong policy of deciding cases on their merits" resulted in
19 dismissal of Plaintiff's previous motions.

20 The granting of a default judgment is a two-step process directed by Federal Rule of Civil
21 Procedure ("Rule") 55. Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). The first step is
22 an entry of clerk's default based on a showing, by affidavit or otherwise, that the party against
23 whom the judgment is sought "has failed to plead or otherwise defend." Fed. R. Civ. P. 55(a). The
24 second step is default judgment under Rule 55(b), a decision which lies within the discretion of
25 the Court. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). Factors which a court, in its
26 discretion, may consider in deciding whether to grant a default judgment include: (1) the
27 possibility of prejudice to the plaintiff, (2) the merits of the substantive claims, (3) the sufficiency
28 of the complaint, (4) the amount of money at stake, (5) the possibility of a dispute of material fact,

1 (6) whether the default was due to excusable neglect, and (7) the Federal Rules' strong policy in
2 favor of deciding cases on the merits. Eitel, 782 F.2d at 1471-72.

3 The Court finds that default judgment is not warranted. As stated in the Court's July 18,
4 2018 Order, Defendants have appeared in this matter and have continuously defended. See docket
5 generally. Indeed, the docket in this matter amassed over two hundred entries at the time Plaintiff
6 filed the pending motions. In conjunction with the continual defense, the Court finds that this
7 matter should be decided on its merits. The Court therefore denies Plaintiff's two motions.

8 To be sure, to the extent that Plaintiff seeks reconsideration of the Court's July 18, 2018
9 Order by resubmitting motions for entry of clerk's default and for default judgment, the Court
10 denies the motions. "[A] motion for reconsideration should not be granted, absent highly unusual
11 circumstances, unless the district court is presented with newly discovered evidence, committed
12 clear error, or if there is an intervening change in the controlling law." Marlyn Nutraceuticals, Inc.
13 v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotation and citation
14 omitted). A motion for reconsideration "may not be used to raise arguments or present evidence
15 for the first time when they could reasonably have been raised earlier in the litigation." Id.
16 Plaintiff has not presented highly unusual circumstances nor new evidence, clear error, or a change
17 in controlling law. The Court denies the motions to the extent Plaintiff submitted them as to
18 request reconsideration of the July 18, 2018 Order.

19 **IT IS ORDERED** that Plaintiff Lola McGee's Motion for Entry of Clerk's Default (ECF
20 No. 215) and Motion for Default Judgment (ECF No. 216) are DENIED.

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22 DATED: March 31, 2019.

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25 **RICHARD F. BOULWARE, II**
26 **UNITED STATES DISTRICT JUDGE**
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